

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:08CV67-03-MU

BRIAN KELLY FERGUSON,)
)
Plaintiff,)
)
v.)
)
CALDWELL COUNTY JAIL; CAPTAIN CHRIS)
BRACKETT)
)
Defendants.)
)

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed July 10, 2008. (Document No. 1.)

Plaintiff alleges in his Complaint against the Caldwell County Jail and Captain Chris Brackett that on December 29, 2006, while housed in the Caldwell County Jail, Plaintiff was housed with an inmate who had active tuberculosis. Plaintiff contends requested "Detention Center officials to place [him] in a non-exposed environment..." but that he was not moved and that nine months later, in September 2007, he tested positive for tuberculosis. Medications and treatments were provided by the Caldwell County Health Department, however, Plaintiff contends that Captain Chris Brackett "interrupted the prescribed treatment, of his own person, therefore causing a failure to provide treatment, by not allowing outside care to be given or arrange for the Petitioner's serious medical need to be adequately treated." (Complaint at 3.)

As an initial matter, the Court notes that the Caldwell County Jail is not a proper party subject to suit, under these circumstances, under section 1983 and therefore is dismissed. With respect to the claim against Captain Chris Brackett for interference with Plaintiff's medication and

treatment, the undersigned finds that the Defendant should file an Answer detailing and responding to Plaintiff's allegation as to Defendant Captain Chris Brackett. To the extent a dispositive motion is also appropriate, the Court will consider it at the same time.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

- 1) The Caldwell County Jail is dismissed from this action;
- 2) No later than forty (40) days from the filing of this Order, the Defendant shall file an Answer to Plaintiff's Complaint, detailing and responding to Plaintiff's allegation against Defendant Chris Brackett regarding his alleged interference with Plaintiff's medication and treatment for tuberculosis; and
3. The Clerk shall issue summons and deliver it forthwith to the U.S. Marshall who will make service of process without additional cost.

SO ORDERED.

Signed: July 31, 2008



Graham C. Mullen
United States District Judge

